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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/752,898	01/06/2004	Brett J. Buchanan	BBUCP101USA	5093
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ERIC D. JORGENSEN 1457 KING ROAD HINCKLEY, OH 44233			EXAMINER LEFF, STEVEN N	
			ART UNIT	PAPER NUMBER
			1761	
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			05/15/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/752,898

Applicant(s)

BUCHANAN, BRETT J.

Examiner

Steven Leff

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,5-13 and 15-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5-13 and 15-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

- The word “nutriment” in claim 21 is misspelled.
- It is believed that the word “and” on line 6 of claim 1 should be “or”. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

- Claims 1-2, 5-13, 15-23, and 25-27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
 - The phrase “for oral interaction” of claims 1, 10, 19 are rejected as it is unclear if the oral interaction represents:
 1. The shell is licked.
 2. The toy is chewed.
 3. The shell is consumable.
 4. The shape of the shell.
 5. The shape of the toy.
 - The phrase “substantially homogeneous” of claim 21 is unclear as to how something may “substantially homogenous”, and to what extent this includes if not completely homogenous.
 - Claim 18 is rejected as it appears to conflict with independent claim 10. Independent claim 10 teaches that “the edible material comprises a combination of different edible components,” however claim 18, which depends from claim 10, teaches, that the toy comprises “a single edible material”.

Examiners' note: It is noted in one interpretation that currently amended claim 1 recites "a shell for oral interaction with the animal, an edible material surrounded by the shell... wherein at least one of a shape of the shell or the edible material facilitates stimulation of a cat to interact therewith." As currently amended the claim is directed to either the shell of the toy or the edible material facilitates stimulation of a cat to interact therewith, however claim 1 further states that the edible material includes catnip. Therefore it is confusing as to whether the catnip limits the edible material taught on line 3 of claim 1 or the edible material on line 5 of claim 1. Further the statement is confusing due to the fact that catnip stimulates a cat, thus with respect to the statement either the shell of the toy or the edible material "facilitates stimulation of a cat to interact therewith," the claim recites an option which can never be attained due to the fact that the catnip is included in the edible material of line 3 which is required by the claim, thereby eliminating the other option of the shape of the shell stimulating a cat. The same principal applies regarding the shape of the shell, where the toy comprises "a shell for oral interaction," and the shell is shaped to "facilitate prolonged motion of the toy when the toy is set in motion." In this instance the shape facilitates stimulation by a cat as is required by the claim, thus eliminating the second aspect of the "or" statement which teaches "or the edible material" as it can never be achieved as the claim is currently written.

Response to Arguments and Amendment

Applicant's arguments, with respect to applicant's amendments, have been fully considered and are persuasive with respect to the limitations "an edible material surrounded by the shell," and "mixing the edible material into a substantially homogeneous mixture of at least one of an inducement, a nutrient, or a treatment." The rejection of Brekau (DE 29703253), cited in the previous Office action, with respect to claims 1, 3, 5, 10-13, 15, 17, 18, 21-23, 26 and 27, have been withdrawn. Further, the rejection of Danesuk et al. (6178922), cited in the previous Office action, with respect to claims 2, 4, 9, 14, and 16, have been withdrawn, and the rejection of Smith, with respect to claims 1-5, 10, 14, 16, and 18, have been withdrawn, as well as the rejection of Fisher with respect to claims 6, 7, and 9, and the rejections of Brekau in view of Markham with respect to claim 8, and the rejection of Brekau in view of Smith with regard to claims 18, 24, and 25 have been withdrawn.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

- Claims 1, 2, 5, 8, 10-13, 15, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Brekau. (DE 29703253)

The references are taken as cited in the previous Office action, and further with respect to the limitations of previous claims 3, 4, and 14, applicant has incorporated the previous limitations of claims 3, 4, and 14 into claims 1, and 10, thus necessitating the new rejection.

With respect to claims 1, 2, 5, 8, 10-13, 15, and 17, Brekau teaches an edible toy for an animal, which comprises a shell that is for oral interaction with the animal, (pg. 2 line 14+) and edible material, which is surrounded by the shell (pg. 2 line 18+). The edible material which is surrounded by the shell is accessible the animal over an extended period of time, where the toy is consumable in its entirety (pg. 2 line 16+). Further Brekau teaches that at least one of the shape of the shell or the edible material facilitates stimulation of a cat to interact therewith, where the edible material includes catnip, and the shape facilitates prolonged motion of the toy when the toy is in motion (pg. 2 line 7+, 15). Brekau continues by teaching that the shell includes an edible nodule (pg. 2 line 14+).

Brekau continues by teaching an edible cat toy which comprises a shell for oral interaction with the cat, and an edible material surrounded by the shell that is accessible by the cat over an extended period of time, where the edible material comprises a combination of different edible components (pg. 2 line 18), and the toy is consumable in its entirety (pg. 2 line 16+). Brekau continues by teaching that the shell is formed of two mating pieces that are bonded together to enclose the one or more edible materials (pg. 2 line 4+), which move freely within the shell (fig. 2, pg. 2 line 4), and where the shell is refillable (fig. 2). The shell further includes one or more holes for releasing the edible material there through from within the shell (pg. 3 line 3, fig. 3).

In response to applicant's argument that Brekau does not teach the use of catnip with respect to claim 1, it is noted that in one interpretation claim 1 teaches that at least one of a shape of the shell, or the edible material facilitates stimulation of a cat. Brekau is applied to claim 1 with respect to the shape of the shell. In addition claims 2 and 5 contain limitations with respect to the edible material, however claim 1 teaches that at least one of a shape of the shell, or the edible material facilitates stimulation of a cat. Therefore, Brekau is taken with respect to the shape of the shell only, and the claims were examined with regard to the shape stimulating a cat, and not the edible material including catnip due to the fact that this limitation is not required by claim 1, thus Brekau teaches all of the limitations required by the claims.

In response to applicant's argument that Brekau does not teach that the edible material includes a combination of different edible components, it is noted that Brekau teaches on page 2 line 18 that the shell is "filled with flavorings".

- Claims 1, 2, 5-7, 10, 13, 16 and 19-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Danesuk et al. (6178922). The rejection with respect to claims 19 and 20 are taken as cited in the previous Office Action mailed October 31, 2006.

The reference is taken as cited in the previous Office action, and further with respect to the limitations of previous claims 3, 4, and 14, applicant has incorporated the previous limitations of claims 3, 4, and 14 into claims 1, and 10, thus necessitating the new rejection.

With respect to claims 1, 2, 5-7, 10, 13, 16 and 19-20, Denesuk et al. teach an edible toy for an animal which comprises a shell that is for oral interaction with the animal (col. 15 line 64), and edible material which is surrounded by the shell (col. 3 line 65+). The edible material which is surrounded by the shell is accessible the animal over an extended period of time, where the toy is consumable in its entirety (col. 13 line 30+). Further, Denesuk et al. teach that at least one of the shape of the shell or the edible material facilitates stimulation of a cat to interact therewith, where the edible material includes catnip, and the shape facilitates prolonged motion of the toy when the toy is in motion (col. 15 line 64+). Further, Denesuk et al. teach that edible material comprises at least one of an inducement, a nutrient, or a treatment (col. 16 line 1+), and where the

edible material is accessed by the cat biting the shell (col. 16 line 4+). Further the shell is compressed to a compression parameter for a particular animal (col. 16 line 3+, col. 13 line 14+) such that a lower compression parameter facilitates easier access to the edible material and a higher compression parameter facilitates more difficult access to the edible material.

Denesuk et al. continue by teaching an edible cat toy which comprises a shell of oral interaction with the cat, and an edible material surrounded by the shell that is accessible by the cat over an extended period of time, where the edible material comprises a combination of different edible components (col. 16 line 22+), and the toy is consumable in its entirety (col. 9 line 28+). Denesuk et al. further teach that the edible material comprises a liquid (col. 15 line 67+), and that the shell is flexible such that distortion thereof by the cat causes the edible material to be released (col. 13 line 31+). The shell and the edible material further form a contiguous composition of a single edible material (col. 6 line 10, col. 15 line 29+).

In response to applicant's argument that Denesuk et al. does not teach an edible material which is surrounded by the shell, it is noted that Denesuk et al. teach that the microbe-inhibiting agent is applied as a liquid and is "deposited on the surface" of the article. Thus Denesuk et al. teach all of the limitations required by the claims.

- Claims 21-23, and 25-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith. (1022113)

The references are taken as cited in the previous Office action, and further with respect to the limitations of previous claim 24, applicant has incorporated the previous limitations of claim 24 into claim 21, thus necessitating the new rejection.

Smith teaches a method of providing an edible toy for an animal, specifically a cat (pg. 1 line 28+), comprising (pg. 1 line 49+); mixing the edible material into a substantially homogeneous mixture of at least one of an inducement, a nutrient, or a treatment, (pg. 1 line 83) forming a shell for housing the edible material, and inserting the edible material therein (pg. 1 line 100+).

Smith further teaches compressing at least one of the shell or the edible material to a compression parameter that allows the cat to access the edible material thereof via at

least one of licking, biting, or clawing (pg. 1 line 76+). In addition Smith teaches, that the mixture of edible components (pg. 2 line 2+) thereof exhibits a marbling effect (fig. 3), and further that a hole is formed in the shell such that the edible material can be replaced there through. The shell may further comprise the edible material (pg. 1 line 74+).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Leff whose telephone number is (571) 272-6527. The examiner can normally be reached on Mon-Fri 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571)272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


KEITH HENDRICKS
PRIMARY EXAMINER